

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE IMPLEMENTATION</b>	)	<b>ORDER SETTING FILING</b>
<b>OF THE FEDERAL COMMUNICATIONS</b>	)	<b>DEADLINE</b>
<b>COMMISSION'S TRIENNIAL REVIEW ORDER--</b>	)	
<b>90 DAY PROCEEDING</b>	)	<b>TC03-178</b>

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC found that, on a national level, "requesting carriers are not impaired without access to unbundled local circuit switching when serving DS1 enterprise customers." *Order* at ¶ 419.

However, the FCC went on to find that "special circumstances may create impairment without access to unbundled local circuit switching to serve enterprise customers in particular markets." *Id.* Based on this finding, the FCC stated that it will allow state commissions "90 days to petition the [FCC] to rebut the national finding in individual markets based on specific operational evidence regarding loop, collocation, and transport provisioning and specific economic evidence including the actual deployment of competitive switches and competitors' costs in serving enterprise customers." *Id.* In addition, the FCC found that "[a]fter the 90-day period, states may wish, pursuant to state-determined procedures, to revisit whether competitive LECS are impaired without access to unbundled local circuit switching to serve enterprise customers due to changes in the specified operational and economic criteria." *Order* at ¶ 455.

Based on these provisions of the FCC Order, the Public Utilities Commission (Commission) requested written comments from any interested person or entity regarding how the Commission should proceed with this issue. The Commission requested comments, to be filed on or before September 29, 2003, on the following issues:

1. Do you intend to challenge the FCC's presumption of no impairment? If so, please provide a short explanation of the bases for your challenge.
2. If no person or entity intends to challenge the presumption, should the Commission hold any proceedings regarding the presumption at this time?
3. If a proceeding is held, do you intend to participate?
4. If the Commission holds proceedings on whether the presumption should be rebutted, please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline.
5. Please provide any additional comments the Commission should consider

regarding this issue.

The Commission received comments from Qwest Corporation, AT&T Communications of the Midwest, Inc., Midcontinent Communications, and the South Dakota Telecommunications Association. No company indicated that it intended to challenge the presumption and no company requested that the Commission hold proceedings in the event no one challenged the presumption. Based on these comments, the Commission is setting a deadline of October 14, 2003, for any person or entity to file a petition with the Commission which seeks to rebut the FCC's finding of non-impairment. The petition shall be accompanied by written testimony and exhibits, as well as a proposed procedural schedule. If no such petition is filed, the Commission may choose to not hold any proceedings regarding this issue at this time. It is therefore

ORDERED, that any interested person or entity shall file a petition, with supporting documents, rebutting the FCC's finding of non-impairment on or before October 14, 2003.

Dated at Pierre, South Dakota, this 2nd day of October, 2003.

<p style="text-align: center;"><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

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ROBERT K. SAHR, Chairman

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GARY HANSON, Commissioner

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JAMES A. BURG, Commissioner